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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,691	03/24/2004	Dirk Weseloh	P03,0118-01	4405
26574	7590	08/26/2009		
SCHIFF HARDIN, LLP PATENT DEPARTMENT 233 S. Wacker Drive-Suite 6600 CHICAGO, IL 60606-6473			EXAMINER	
			WON, MICHAEL YOUNG	
			ART UNIT	PAPER NUMBER
			2455	
MAIL DATE	DELIVERY MODE			
08/26/2009	PAPER			

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/807,691

Filing Date: March 24, 2004

Appellant(s): WESELOH, DIRK

Brett A. Valiquet (Reg. No. 27,841)
For Appellant

EXAMINER'S ANSWER

1. This is in response to the appeal brief filed November 3, 2008 appealing from the Office action mailed May 23, 2008.

Real Party in Interest

2. The appellants' statement identifying the real party in interest contained in the brief is correct.

Related Appeals and Interferences

3. The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims

4. The appellants' statement of the status of claims contained in the brief is correct.

Status of Amendments

5. The appellants' statement of the status of amendments after contained in the brief is correct.

Summary of Claimed Subject Matter

6. The appellants' summary of claimed subject matter contained in the brief is correct.

Grounds of Rejection to be Reviewed on Appeal

7. The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

Claims Appendix

8. The appellants' copy of the appealed claims contained in the Appendix to the brief is correct.

Evidence Relied Upon

US 6,646,564	Azieres et al.	11-2003
US 6,167,358	Othmer et al.	12-2000

Grounds of Rejection

9. The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 9-12, 14, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Azieres et al. (US 6,646,564) and further in view of Othmer et al. (US 6,167,358).

INDEPENDENT:

As per **claim 9**, Azieres teaches a method for remote maintenance of a technical device by a maintenance technician by a maintenance computer, comprising the steps of:

establishing a remote data connection between the maintenance computer and the technical device to be maintained (see Fig.1 and col.4, lines 42-47: "Remote access to the system is available by any number of known communication protocols");

transmitting electronic access information describing a scope of intended access to data stored in the technical device from the maintenance computer to the technical device to be maintained, said data being understood to be confidential by an operating personnel for the technical device (see col.5, lines 28-31: "type of data the user can

view and the type of commands a user can issue... is a function of the user's security access level");

transmitting an electronic identifier identifying the maintenance technician from the maintenance computer to the technical device to be maintained (see col.5, lines 23-28: "series of passwords, logon identifiers, and personal identifiers"; and lines 45-47: "level of access based on this user status identifier");

determining an approval by said operating personnel of an access to the technical device dependent on the access information describing the scope of the intended access to the data and the identifier (see col.5, lines 47-52: "Endowing the user with a specific level of authority");

generating electronic authentication information by the technical device dependent on the determination of the approval (see col.5, lines 42-43: "the system will grant a predetermined level of access");

transmitting said authentication information from the technical device to the maintenance computer (inherency); and

with said maintenance computer, conducting said remote maintenance of said technical device, said maintenance computer receiving from said technical device confidential data which was authorized based on said approval (see col.5, lines 47-64: "by virtue of the user's status as a manager").

Although Azieres further teaches a technical device and a maintenance computer, Azieres does not explicitly teach automatically deleting electronic data that has been transmitted and stored in a computer dependent on termination of the access.

Othmer teaches automatically deleting electronic data that has been transmitted and stored in a computer dependent on termination of the access (see col.14, lines 13-16: "instructing it to delete its locally stored copy of the dynamic black box and to end the communication session").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Azieres in view of Othmer by implementing automatically deleting electronic data that has been transmitted and stored in a computer dependent on termination of the access. One would be motivated to do so because Azieres teaches that the security access level can be based also on "origin of a query" (see col.5, lines 31-40) and such means ensures that the information is not available to others accessing from the same origin at a later time.

As per **claim 15**, Azieres teaches a method for remote maintenance of a technical device by a maintenance technician by a maintenance computer, comprising the steps of:

establishing a remote data connection between the maintenance computer and the technical device to be maintained (see Fig.1 and col.4, lines 42-47: "Remote access to the system is available by any number of known communication protocols");

transmitting electronic access information describing a scope of intended access to data stored in the technical device from the maintenance computer to the technical device to be maintained, said data being understood to be access sensitive by an operating personnel for the technical device (see col.5, lines 28-31: "type of data the

user can view and the type of commands a user can issue... is a function of the user's security access level");

transmitting an electronic identifier identifying the maintenance technician from the maintenance computer to the technical device to be maintained (see col.5, lines 23-28: "series of passwords, logon identifiers, and personal identifiers"; and lines 45-47: "level of access based on this user status identifier");

determining an approval by said operating personnel of an access to the technical device dependent on the access information describing the scope of the intended access to the data and the identifier (see col.5, lines 47-52: "Endowing the user with a specific level of authority");

generating electronic authentication information dependent on the determination of the approval (see col.5, lines 42-43: "the system will grant a predetermined level of access");

transmitting said authentication information to the maintenance computer (inherency); and

with said maintenance computer, conducting said remote maintenance of said technical device, said maintenance computer receiving from said technical device data considered to be access sensitive which was authorized based on said approval (see col.5, lines 47-64: "by virtue of the user's status as a manager").

Although Azieres further teaches a technical device and a maintenance computer, Azieres does not explicitly teach automatically deleting electronic data that has been transmitted and stored in a computer dependent on termination of the access.

Othmer teaches automatically deleting electronic data that has been transmitted and stored in a computer dependent on termination of the access (see col.14, lines 13-16: "instructing it to delete its locally stored copy of the dynamic black box and to end the communication session").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Azieres in view of Othmer by implementing automatically deleting electronic data that has been transmitted and stored in a computer dependent on termination of the access. One would be motivated to do so because Azieres teaches that the security access level can be based also on "origin of a query" (see col.5, lines 31-40) and such means ensures that the information is not available to others accessing from the same origin at a later time.

As per **claim 17**, Azieres teaches a computer-readable medium comprising a computer program for remote maintenance of a technical device by a maintenance technician by a maintenance computer having said computer program, said program performing the steps of:

establishing a remote data connection between the maintenance computer and the technical device to be maintained (see Fig.1 and col.4, lines 42-47: "Remote access to the system is available by any number of known communication protocols");

transmitting electronic access information describing a scope of intended access to data stored in the technical device from the maintenance computer to the technical device to be maintained, said data being understood to be confidential by an operating

personnel for the technical device (see col.5, lines 28-31: "type of data the user can view and the type of commands a user can issue... is a function of the user's security access level");

transmitting an electronic identifier identifying the maintenance technician from the maintenance computer to the technical device to be maintained (see col.5, lines 23-28: "series of passwords, logon identifiers, and personal identifiers"; and lines 45-47: "level of access based on this user status identifier");

receiving approval by said operating personnel of an access to the technical device dependent on the access information describing the scope of the intended access to the data and the identifier (see col.5, lines 47-52: "Endowing the user with a specific level of authority");

receiving electronic authentication information generated by the technical device dependent on the determination of the approval (see col.5, lines 42-43: "the system will grant a predetermined level of access");

receiving said authentication information from the technical device (inherency);
and

conducting said remote maintenance of said technical device, said maintenance computer receiving from said technical device confidential data which was authorized based on said approval (see col.5, lines 47-64: "by virtue of the user's status as a manager").

Although Azieres further teaches a technical device and a maintenance computer, Azieres does not explicitly teach automatically deleting electronic data that has been transmitted and stored in a computer dependent on termination of the access.

Othmer teaches automatically deleting electronic data that has been transmitted and stored in a computer dependent on termination of the access (see col.14, lines 13-16: "instructing it to delete its locally stored copy of the dynamic black box and to end the communication session").

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of Azieres in view of Othmer by implementing automatically deleting electronic data that has been transmitted and stored in a computer dependent on termination of the access. One would be motivated to do so because Azieres teaches that the security access level can be based also on "origin of a query" (see col.5, lines 31-40) and such means ensures that the information is not available to others accessing from the same origin at a later time.

DEPENDENT:

As per **claim 10**, which depends on claim 9, Azieres teaches further comprising the step of: printing information by the technical device dependent on the authentication information (see col.5, lines 54-55 and col.7, lines 19-24).

As per **claim 11**, which depends on claim 9, Azieres teaches further comprising the step of: transmitting electronic termination information dependent on a termination of the access from the maintenance computer to the technical device (inherency).

As per **claim 12**, which depends on claim 9, Azieres teaches further comprising the step of: transmitting electronic documentation of accesses effected by the maintenance computer from the maintenance computer to the technical device (see col.5, lines 54-55 and col.7, lines 19-29).

As per **claim 14**, which depends on claim 9, Azieres teaches further comprising the step of: automatically determining an extent of an intended data access during the remote maintenance (see col.11, lines 46-50).

Response to Argument

11. The examiner summarizes the various points raised by the appellant and addresses replies individually.
12. As per appellants' arguments filed November 3, 2008, the appellant(s) argue in substance:
 - (a) With respect to claim 1, that the rejection is improper because Othmer teaches "a server (which is monitoring client computers and is the "maintenance computer") sends a message to the client computer (the "technical device") instructing the client machine to delete its locally stored copy..." and thus teaches away from Appellant(s) invention (see Appeal Brief, page 8).

In response to (a), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091,

231 USPQ 375 (Fed. Cir. 1986). The rejection is based on a combination of references. Azieres explicitly teaches a technical device and a maintenance computer (see Fig.1, #100 and #124 respectively). Othmer explicitly teaches deleting data that has been stored when the access is terminated (see independent claim rejections above). Regardless of the direction of travel for the message, which is clearly subjective, the functionality remains the same. That is, to delete stored electronic data upon termination of access. For this reason, the rejection should be sustained.

Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing KSR v. Teleflex, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)).

Accordingly, applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

Accordingly, since the applicant(s) have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a)

because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

(b) With respect to claim 15, that the rejection is improper because Othmer teaches "a server (which is monitoring client computers and is the "maintenance computer") sends a message to the client computer (the "technical device") instructing the client machine to delete its locally stored copy..." and thus teaches away from Appellant(s) invention (see Appeal Brief, page 9).

In response to (b), see In response to (a) above.

(c) With respect to claim 17, that the rejection is improper because Othmer teaches "a server (which is monitoring client computers and is the "maintenance computer") sends a message to the client computer (the "technical device") instructing the client machine to delete its locally stored copy..." and thus teaches away from Appellant(s) invention (see Appeal Brief, page 8).

In response to (c), see In response to (a) above.

Related Proceeding(s) Appendix

13. There are no copies of any decisions rendered by a court or the Board in any proceedings.

14. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michael Won/

Primary Examiner

August 18, 2009

CONFEREES:

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